



# **HIPAA PREEMPTION ANALYSIS**

## **INFORMATION PRACTICES ACT OF 1977**

**January 2004**

## **TABLE OF CONTENTS**

INTRODUCTION .....	5
ANALYSIS .....	7
Article 1 .....	7
General Provision and Legislative Findings .....	7
Civil Code Section 1798: .....	7
Civil Code Section 1798.1: .....	8
Article 2 .....	10
Definitions .....	10
Civil Code Section 1798.3(a): .....	10
Civil Code Section 1798.3(b): .....	13
Civil Code Section 1798.3(c): .....	15
Civil Code Section 1798.3(d): .....	17
Civil Code Section 1798.3(e): .....	18
Civil Code Section 1798.3(f): .....	19
Civil Code Section 1798.3(g): .....	21
Civil Code Section 1798.3(h): .....	23
Civil Code Section 1798.3(i): .....	25
Civil Code Section 1798.3(j): .....	27
Civil Code Section 1798.3(k): .....	28
Article 5 .....	29
Agency Requirements .....	29
Civil Code Section 1798.14: .....	29
Civil Code Section 1798.15: .....	30
Civil Code Section 1798.16(a): .....	31
Civil Code Section 1798.16(b): .....	33
Civil Code Section 1798.16(c): .....	35
Civil Code Section 1798.17: .....	37
Civil Code Section 1798.18: .....	39
Civil Code Section 1798.19: .....	41
Civil Code Section 1798.20: .....	43
Civil Code Section 1798.21: .....	44
Civil Code Section 1798.22: .....	46
Civil Code Section 1798.23: .....	48
Article 6 .....	49
Conditions of Disclosure .....	49
Civil Code Section 1798.24(a): .....	49
Civil Code Section 1798.24(b): .....	50
Civil Code Section 1798.24(c): .....	52
Civil Code Section 1798.24(d): .....	54
Civil Code Section 1798.24(e): .....	56

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Civil Code Section 1798.24(f): .....	58
Civil Code Section 1798.24(g): .....	60
Civil Code Section 1798.24(h): .....	62
Civil Code Section 1798.24(i) .....	64
Civil Code Section 1798.24(j): .....	66
Civil Code Section 1798.24(k): .....	68
Civil Code Section 1798.24(l): .....	70
Civil Code Section 1798.24(m): .....	72
Civil Code Section 1798.24(n): .....	73
Civil Code Section 1798.24(o): .....	75
Civil Code Section 1798.24(p): .....	77
Civil Code Section 1798.24(q): .....	80
Civil Code Section 1798.24(r): .....	81
Civil Code Section 1798.24(s): .....	83
Civil Code Section 1798.24(t): .....	85
Civil Code Section 1798.24(u): .....	86
Civil Code Section 1798.24(v): .....	88
Civil Code Section 1798.24a: .....	89
Civil Code Section 1798.24b: .....	91
Article 7 .....	93
Accounting for Disclosures .....	93
Civil Code Section 1798.25: .....	93
Civil Code Section 1798.26: .....	95
Civil Code Section 1798.27: .....	97
Civil Code Section 1798.28: .....	98
Civil Code Section 1798.29: .....	99
Article 8 .....	102
Access to Records and Administrative Remedies .....	102
Civil Code Section 1798.30: .....	102
Civil Code Section 1798.32: .....	103
Civil Code Section 1798.33: .....	105
Civil Code Section 1798.34(a): .....	107
Civil Code Section 1798.34(b): .....	109
Civil Code Section 1798.34(c): .....	110
Civil Code Section 1798.34(d): .....	111
Civil Code Section 1798.34(e): .....	112
Civil Code Section 1798.35: .....	113
Civil Code Section 1798.36: .....	115
Civil Code Section 1798.37: .....	117
Civil Code Section 1798.38: .....	119
Civil Code Section 1798.39: .....	121
Civil Code Section 1798.40(a): .....	123

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Civil Code Section 1798.40(b): .....	124
Civil Code Section 1798.40(c): .....	125
Civil Code Section 1798.40(d): .....	126
Civil Code Section 1798.40(e): .....	128
Civil Code Section 1798.40(f): .....	130
Civil Code Section 1798.40(g): .....	132
Civil Code Section 1798.40(h): .....	133
Civil Code Section 1798.41(a): .....	135
Civil Code Section 1798.41(b): .....	136
Civil Code Section 1798.41(c): .....	138
Civil Code Section 1798.42: .....	140
Civil Code Section 1798.43: .....	141
Civil Code Section 1798.44: .....	143
Article 9 .....	144
Civil Remedies .....	144
Civil Code Section 1798.45: .....	144
Civil Code Section 1798.46: .....	146
Civil Code Section 1798.47: .....	148
Civil Code Section 1798.48: .....	150
Civil Code Section 1798.49: .....	152
Civil Code Section 1798.50: .....	154
Civil Code Section 1798.51: .....	155
Civil Code Section 1798.53: .....	156
Article 10 .....	158
Penalties .....	158
Civil Code Section 1798.55: .....	158
Civil Code Section 1798.56: .....	159
Civil Code Section 1798.57: .....	161
Article 11 .....	163
Miscellaneous Provisions .....	163
Civil Code Section 1798.60: .....	163
Civil Code Section 1798.61: .....	165
Civil Code Section 1798.62: .....	166
Civil Code Section 1798.63: .....	167
Civil Code Section 1798.64: .....	168
Civil Code Section 1798.66: .....	170
Civil Code Section 1798.67: .....	171
Civil Code Section 1798.68: .....	173
Civil Code Section 1798.69: .....	175
Article 1 .....	177
Construction with Other Laws .....	177
Civil Code Section 1798.70: .....	177

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Civil Code Section 1798.71:.....	179
Civil Code Section 1798.72:.....	180
Civil Code Section 1798.73:.....	181
Civil Code Section 1798.74:.....	182
Civil Code Section 1798.75:.....	183
Civil Code Section 1798.76:.....	184
Civil Code Section 1798.77:.....	185
Civil Code Section 1798.78:.....	187

## **INTRODUCTION**

The following is a comprehensive analysis of the provisions of the Information Practices Act of 1977 (or IPA) for preemption by the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA). corresponding HIPAA provisions. The complete text of the Information Practices Act can also be found through a separate link.

The Information Practices Act is the State equivalent of the Federal Privacy Act. It regulates the collection, use and disclosure of personal information, including medical information protected under HIPAA, by State agencies. The IPA applies to State agencies, offices, officers, departments, divisions, bureaus, boards, and commissions. (Civ. Code § 1798.3.) It is not applicable to the State Compensation Insurance Fund, or to city or county agencies. (Civ. Code §§ 1798.3 and 1798.14 and Govt. Code § 6252.)

This analysis is the final and official approved preemption analysis of the California Office of HIPAA Implementation with respect to this California law, pursuant to Health and Safety Code, Section 130311.5.

### **Additional Considerations:**

- This analysis is a planning document which provides baseline information only—it is the responsibility of entities regulated by the IPA and by HIPAA to become familiar with these laws and this analysis and to draft specific policies and procedures for their particular operations and needs.
- Individuals and entities regulated by the IPA and by HIPAA should have their legal and HIPAA staff carefully review this analysis (and the other related IPA preemption analysis documents) prior to HIPAA implementation.
- Because HIPAA regulations and California law are constantly changing and the body of knowledge/interpretations are complex and continually evolving, this analyses will remain subject to revision by CalOHI as required by these changes.
- This analysis represents the best judgment of CalOHI. However, because of the complexity of HIPAA regulations and their interplay with California law, there are many instances where more than one correct interpretations may apply with differing results.

Please forward any comments, corrections, etc. to the attention of:

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



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## ANALYSIS

### Article 1 General Provision and Legislative Findings

#### Civil Code Section 1798:

“This chapter shall be known and may be cited as the Information Practices Act of 1977.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Follow Civil Code section 1798, only. No related or analogous HIPAA provisions.

FINAL



**Civil Code Section 1798.1:**

“The Legislature declares that the right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them. The Legislature further makes the following findings:

(a) The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.

(b) The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.

(c) In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.1, only. No related or analogous HIPAA provisions.

## Article 2 Definitions

### Civil Code Section 1798.3(a):

“As used in this chapter:

(a) The term "personal information" means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The term “personal information” is not defined in HIPAA. Instead, HIPAA protects “protected health information,” which is defined in HIPAA as follows:

“Protected health information means individually identifiable health information: (1) Except as provided in paragraph (2) of this definition, that is: (i) Transmitted by electronic media; (ii) Maintained in any medium described in the definition of electronic media at § 162.103 of this subchapter; or (iii) Transmitted or maintained in any other form or medium. (2) Protected health information excludes individually identifiable health information in: (i) Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv).”

(45 C.F.R. § 164.501 (definition of “protected health information”).)

“Individually identifiable health information” is defined in HIPAA as follows:

“Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) That identifies the individual; or (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.”

(45 C.F.R. § 160.103 (definition of “individually identifiable health information”).)

“Health information” is defined in HIPAA as follows:

“Health information means any information, whether oral or recorded in any form or medium, that: (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. military personnel under title 10 of the United States Code.”

(45 C.F.R. § 160.103 (definition of “health information”).)

“Personal information” as defined by the Information Practices Act is much broader than “protected health information”, which is the protected category of information in HIPAA. The Information Practices Act covers any information that “identifies or describes an individual,” including physical description, financial matters, and medical history.

The definition of “protected health information” in HIPAA, on the other hand, is much narrower. First the information (whether transmitted or maintained in any form or medium) must relate to the past, present, or future physical or mental health or condition of an individual, or to the provision of health care to an

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



individual, or to the past, present, or future payment for the provision of health care to an individual. Next the information must have been created or received by a health care provider, health plan, or health care clearinghouse. Lastly, to be protected by HIPAA, the information must identify the individual, or be information for which there is a reasonable basis to believe can be used to identify the individual. The definition of “protected health information” in HIPAA does not include education records covered by the Family Educational Right and Privacy Act, and records described at 20 U.S.C. 1232g(a)(4)(B)(iv).

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.3(a) and HIPAA privacy rule sections 160.103, 164.501.

**Civil Code Section 1798.3(b):**

“As used in this chapter:

...

(b) The term "agency" means every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:

(1) The California Legislature.

(2) Any agency established under Article VI of the California Constitution.

(3) The State Compensation Insurance Fund, except as to any records which contain personal information about the employees of the State Compensation Insurance Fund.

(4) A local agency, as defined in subdivision (b) of Section 6252 of the Government Code.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

The Information Practices Act applies only to state agencies, offices, officers, departments, divisions, bureaus, boards, and commissions, and the officers and employees therein. (Cal. Civ. Code § 1798.3 (defining “agency”).) It does not apply to the State Compensation Insurance Fund. Neither does the Information Practices Act apply to city or county agencies. (Cal. Civ. Code §§ 1798.3 and 1798.14, and Cal. Govt. Code § 6252 (defining “local agency”).) In contrast, HIPAA applies to “covered entities,” some of which are entities that are also subject to the Information Practices Act. However, when applying the Information Practices Act (as modified by preemption by HIPAA), only the entities defined in 1798.3(b) are required to comply.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.3(b), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.3(c):**

“As used in this chapter:

...

(c) The term "disclose" means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The term “disclose” is not defined in HIPAA. However, HIPAA regulations define the term “disclosure” as follows: “Disclosure means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.” (45 C.F.R. § 164.501.) While there are minor differences between the two definitions, they are substantially equivalent. (See, also, analysis of Civ. Code § 1798.3(e).) “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**



**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.3(c), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.3(d):**

“As used in this chapter:

...

(d) The term "individual" means a natural person.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The Information Practices Act limits its protection to only “natural persons”. The term “individual” is defined in HIPAA as follows: “Individual means the person who is the subject of protected health information.” (45 C.F.R. § 164.501.) Section 1798(d) merely defines which types of persons are the subject to the Information Practices Act. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.).

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.3(d), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.3(e):**

“As used in this chapter:

...

(e) The term "maintain" includes maintain, acquire, use, or disclose.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA does not define the term “maintain”. HIPAA does use the words “maintain” and “maintained” in a variety of contexts, but they are used in their ordinary sense with no specialized meaning. Civil Code section 1798.3(e) is much more broad than the ordinary dictionary definition of “maintain” and includes “acquire, use, or disclose” as part of its definition. (See also analysis of Civ. Code § 1798.3(c).) “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.3(e), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.3(f):**

“As used in this chapter:

...

(f) The term "person" means any natural person, corporation, partnership, limited liability company, firm, or association.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA does not define the term “person”. HIPAA does use the words “person” and “persons” in a variety of contexts, but they are used in their ordinary sense with no specialized meaning. Civil Code section 1798.3(f) is much more broad than the ordinary dictionary definition of “person” and includes “corporation, partnership, limited liability company, firm, or association” as part of its definition. (See also Analysis of Civ. Code § 1798.3(d), above.) “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.3(f), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.3(g):**

“As used in this chapter:

...

(g) The term "record" means any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual's name, photograph, finger or voice print, or a number or symbol assigned to the individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA does not define the term “record”, except for purposes of the definition of “designated record set”, which is defined as follows:

“Designated record set means: (1) A group of records maintained by or for a covered entity that is: (i) The medical records and billing records about individuals maintained by or for a covered health care provider; (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the covered entity to make decisions about individuals. (2) For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.”

(45 C.F.R. § 164.501 (definition of “designated record set”); emphasis added.)

HIPAA also uses the terms “record” and “medical record” in a variety of contexts, but they are used in their ordinary sense with no specialized meaning. “Where State law exists and no analogous federal requirement exists, the state

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



requirement would not be 'contrary to' the federal requirement and would therefore not trigger preemption." (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.3(g), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.3(h):**

“As used in this chapter:

...

(h) The term "system of records" means one or more records, which pertain to one or more individuals, which is maintained by any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA does not define the term “system of records”, but does have a term called “designated record set”, which is defined in HIPAA as follows:

“Designated record set means: (1) A group of records maintained by or for a covered entity that is: (i) The medical records and billing records about individuals maintained by or for a covered health care provider; (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the covered entity to make decisions about individuals. (2) For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.”

(45 C.F.R. § 164.501 (definition of “designated record set”).)

“Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)



**Exception (45 C.F.R. § 160.203(b))?** (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))?** (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.3(h), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.3(i):**

“As used in this chapter:

...

(i) The term "governmental entity," except as used in Section 1798.26, means any branch of the federal government or of the local government.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA has no definition of “governmental entity” and thus there is no further HIPAA preemption analysis required. [NOTE: HIPAA does define “State” as one of the following: “(1) for a health plan established or regulated by Federal law, State has the meaning set forth in the applicable section of the United States Code for such health plan; (2) for all other purposes, State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.” (45 C.F.R. § 160.103.).] “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.3(i), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.3(j):**

“As used in this chapter:

...

(j) The term "commercial purpose" means any purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA has no definition of “commercial purpose”. Moreover, the term “commercial purpose” is used only in Civil Code section 1798.60, and in that statute only to prohibit the distribution of an individual’s name and address. (See Analysis of Civ. Code § 1798.60, below.) No further HIPAA preemption analysis is required. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.3(j), only. No related or analogous HIPAA provisions.

FINAL

**Civil Code Section 1798.3(k):**

“As used in this chapter:

...

(k) The term "regulatory agency" means the Department of Financial Institutions, the Department of Corporations, the Department of Insurance, the Department of Real Estate, and agencies of the United States or of any other state responsible for regulating financial institutions.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA has no definition of “regulatory agency” and thus there is no further HIPAA preemption analysis required. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.3(k), only. No related or analogous HIPAA provisions.

**Article 5  
Agency Requirements**

**Civil Code Section 1798.14:**

“Each agency shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

Yes. The use set forth in Section 1798.14 is required, rather than permitted. Therefore HIPAA section 164.512(a)(1) applies. In addition, the statute is not contrary to HIPAA because the HIPAA “minimum necessary” standard only applies when an entity is “using or disclosing protected health information or when requesting protected health information from another covered entity,” and not when it is merely maintaining the information. (45 C.F.R. § 164.502(b).).

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.14, only (by operation of HIPAA Privacy Regulations section 164.512(a)(1)).

**Civil Code Section 1798.15:**

“Each agency shall collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA contains no similar requirement to collect personal health information to the greatest extent practicable from the individual who is the subject of the information. Therefore, Civil Code section 1798.15 does not affect or involve HIPAA and there is no further HIPAA preemption analysis required. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.15, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.16(a):**

“(a) Whenever an agency collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or he or she has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity. If the source is an agency, governmental entity or other organization, such as a corporation or association, this requirement can be met by maintaining the name of the agency, governmental entity, or organization, as long as the smallest reasonably identifiable unit of that agency, governmental entity, or organization is named.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Although HIPAA contains requirements relating to the accounting of disclosures of protected health information (see, e.g., (45 C.F.R. 164.528)), there are no requirements in HIPAA that covered entities must maintain the source or sources of the information they collect. Therefore, Civil Code section 1798.16(a) does not affect or involve HIPAA and there is no further HIPAA preemption analysis required. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.



**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.16(a), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.16(b):**

“(b) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, whenever an agency electronically collects personal information, as defined by Section 11015.5 of the Government Code, the agency shall retain the source or sources or any intermediate form of the information, if either are created or possessed by the agency, unless the source is the data subject that has requested that the information be discarded or the data subject has received a copy of the source document.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. "Electronically collected personal information[.]" as defined by Section 11015.5(d) of the Government Code, "means any information that is maintained by an agency that identifies or describes an individual user, including, but not limited to...medical...history...." However, although HIPAA contains requirements relating to the accounting of disclosures of protected health information (see, e.g., (45 C.F.R. 164.528)), there are no requirements in HIPAA that covered entities must maintain the source or sources of the information they collect. Therefore, Civil Code section 1798.16(b) does not affect or involve HIPAA and there is no further HIPAA preemption analysis required. "Where State law exists and no analogous federal requirement exists, the state requirement would not be 'contrary to' the federal requirement and would therefore not trigger preemption." (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

Most importantly, as of June 30, 2002, the Department of Information Technology ceased to exist and therefore this law is non-operative. (See Budget Letter 02-37, issued October 16, 2002.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NONE. This law is non-operative because the Department of Information Technology ceased to exist on June 30, 2002.

**Civil Code Section 1798.16(c):**

“(c) The agency shall maintain the source or sources of the information in a readily accessible form so as to be able to provide it to the data subject when they inspect any record pursuant to Section 1798.34. This section shall not apply if the source or sources are exempt from disclosure under the provisions of this chapter.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Although HIPAA contains requirements relating to the accounting of disclosures of protected health information (see, e.g., (45 C.F.R. 164.528), there are no requirements in HIPAA that covered entities must maintain the source or sources of the information they collect. Therefore, Civil Code section 1798.16(c) does not affect or involve HIPAA and there is no further HIPAA preemption analysis required. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.16(c), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.17:**

“Each agency shall provide on or with any form used to collect personal information from individuals the notice specified in this section. When contact with the individual is of a regularly recurring nature, an initial notice followed by a periodic notice of not more than one-year intervals shall satisfy this requirement. This requirement is also satisfied by notification to individuals of the availability of the notice in annual tax-related pamphlets or booklets provided for them. The notice shall include all of the following:

(a) The name of the agency and the division within the agency that is requesting the information.

(b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.

(c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.

(d) With respect to each item of information, whether submission of such information is mandatory or voluntary.

(e) The consequences, if any, of not providing all or any part of the requested information.

(f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency.

This section does not apply to any enforcement document issued by an employee of a law enforcement agency in the performance of his or her duties wherein the violator is provided an exact copy of the document, or to accident reports whereby the parties of interest may obtain a copy of the report pursuant to Section 20012 of the Vehicle Code.

The notice required by this section does not apply to agency requirements for an individual to provide his or her name, identifying number, photograph, address, or similar identifying information, if this information is used only for the purpose of identification and communication with the individual by the agency, except that requirements for an individual's social security number shall conform with the provisions of the Federal Privacy Act of 1974 (Public Law 93-579).”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Since Civil Code section 1798.17 does not affect or involve HIPAA there is no further HIPAA preemption analysis required. "Where State law exists and no analogous federal requirement exists, the state requirement would not be 'contrary to' the federal requirement and would therefore not trigger preemption." (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.17, only. [NOTE: HIPAA of course has its own privacy notice scheme that must also be followed. (See 45 C.F.R. § 164.520.).]

**Civil Code Section 1798.18:**

“Each agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness. Such standard need not be met except when such records are used to make any determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

First two sentences: No. HIPAA has no express requirements that records be maintained with accuracy, relevance, timeliness, or completeness. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

Last sentence: Yes. HIPAA makes no allowance for the correction, updating, withholding or deletion of portions of a record unless the individual who is the subject of the record makes an amendment request, pursuant to the amendment procedures in HIPAA, and that request is granted by a provider. The sentence is also contrary to HIPAA in that it would impede the transfer of a record pursuant to the HIPAA disclosure regulations.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**



**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



First two sentences: No stringency analysis required because it is not impossible to comply with both this law and HIPAA regulations; and because the law does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA.

Last sentence: No.

**Controlling Law(s):**

PARTIAL PREEMPTION. First two sentences of Civil Code section 1798.18--may not correct, update, withhold, or delete any portion of the record prior to disclosure unless pursuant to HIPAA amendment provisions.

**Civil Code Section 1798.19:**

“Each agency when it provides by contract for the operation or maintenance of records containing personal information to accomplish an agency function, shall cause, consistent with its authority, the requirements of this chapter to be applied to those records. For purposes of Article 10 (commencing with Section 1798.55), any contractor and any employee of the contractor, if the contract is agreed to on or after July 1, 1978, shall be considered to be an employee of an agency. Local government functions mandated by the state are not deemed agency functions within the meaning of this section.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. To the extent other parts of the Information Practices Act are preempted by HIPAA, causing the requirements of the Information Practices Act to be applied to records maintained by contractors of State agencies would be in violation of HIPAA with respect to the preempted portions of the Information Practices Act.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. Applicable HIPAA Privacy Rule provisions, only.

**Civil Code Section 1798.20:**

“Each agency shall establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing personal information and instruct each such person with respect to such rules and the requirements of this chapter, including any other rules and procedures adopted pursuant to this chapter and the remedies and penalties for noncompliance.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA requires that a covered entity “must train all members of its workforce on the policies and procedures with respect to protected health information required by [the HIPAA Privacy Regulations].” Since Civil Code section 1798.20 has no requirement to train personnel regarding the provisions of HIPAA, covered entities must comply with both Civil Code section 1798.20 and also with HIPAA privacy regulation section 164.530(b).

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202))?**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202))?**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.20 (with respect to training on Information Practices Act requirements) and HIPAA Privacy rule section 164.530(b) (with respect to training on HIPAA requirements).

**Civil Code Section 1798.21:**

“Each agency shall establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of this chapter, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA also requires that covered entities “must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information....” And also that covered entities “must reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of [HIPAA Regulations]...[,]” and “reasonably safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.” (45 C.F.R. § 164.530(c) (standard and implementation specification re “safeguards”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.21 and HIPAA Privacy Rule section 164.530(c).

**Civil Code Section 1798.22:**

“Each agency shall designate an agency employee to be responsible for ensuring that the agency complies with all of the provisions of this chapter.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

HIPAA requires that covered entities “must designate a privacy official who is responsible for the development and implementation of the policies and procedures of the entity...[,]” and that covered entities “must designate a contact person or office who is responsible for receiving complaints...and who is able to provide further information about matters [concerning HIPAA patient notice provisions].” (45 C.F.R. § 164.530(a) (standard re “personnel designations”).) Under HIPAA, covered entities must also “document the personnel designations.” (45 C.F.R. § 164.530(a) (implementation specification re “personnel designations”).) Civil Code section 1798.22 does not contain a requirement to designate a contact person or office who is responsible for receiving complaints, and also does not contain provisions requiring the provision of further information about HIPAA notice requirements to patients. Lastly, Civil Code section 1798.22 has no requirement that the personnel designation be documented. Accordingly, covered entities must comply with Civil Code section 1798.22 and also with 45 C.F.R. section 164.530(a).

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.22 and HIPAA Privacy Rule section 164.530(a).



**Civil Code Section 1798.23:**

“The Department of Justice shall review all personal information in its possession every five years commencing July 1, 1978, to determine whether it should continue to be exempt from access pursuant to Section 1798.40.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.23, only. No related or analogous HIPAA provisions.

**Article 6**  
**Conditions of Disclosure**

**Civil Code Section 1798.24(a):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

(a) To the individual to whom the information pertains.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA provides for the disclosure of protected health information to the individual to whom it pertains. (45 C.F.R. § 164.524.) Thus, a covered entity would not find it impossible to comply with both this provision and federal requirements, and the law would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA . (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(a) and HIPAA Privacy Rule section 164.524.

FINAL

**Civil Code Section 1798.24(b):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if such consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The “consent” referred to in Section 1798.24 is actually analogous to “authorization” as used in HIPAA. The part of this requirement that limits the use of a consent to “not more than 30 days before the disclosure,” could be contrary to HIPAA authorization requirements which, although requiring that an expiration date (or event) be included in authorizations, does not specify the length of time authorizations must remain viable before being used to disclose protected health information. (See, 45 C.F.R. §§ 164.508(b)(2)(i); 164.508(c)(1)(v).) However, Section 1798.24(b) also includes the language “or in the time limit agreed to by the individual in the written consent.” Thus, in a situation where the expiration date of a consent/authorization is more than 30 days from the date it is given, a covered State agency would still be able to disclose protected health information after 30 days because the time limit in the consent/authorization was “agreed to by the individual in the written consent.” Therefore, a covered entity would not find it impossible to comply with both this provision and federal requirements and the law would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))?** (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))?** (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(b) and HIPAA Privacy Rule section 164.508. [NOTE: Pursuant to Section 56.29(b) of the Confidentiality of Medical Information Act (Civ. Code § 56, et seq.), “[t]he disclosure of medical information regarding a patient which is subject to subdivision (b) of Section 1798.24 shall be made only with an authorization which complies with the provisions of [the CMIA]. Such disclosure may be made only within the time limits specified in subdivision (b) of Section 1798.24.” See HIPAA Preemption Analysis of the Confidentiality of Medical information Act.]

**Civil Code Section 1798.24(c):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual provided that it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that such person is the authorized representative of the individual to whom the information pertains.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. Although HIPAA generally requires that covered entities must “treat a personal representative as the individual for purposes of [Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations]” (45 C.F.R. § 164.502(g)), it also allows a covered entity to not treat a personal representative as the individual if the covered entity: (1) has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by the personal representative or that treating the personal representative as the personal representative could endanger the individual; or (2) the covered entity, in the exercise of its professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual’s personal representative. (45 C.F.R. § 164.502(g)(5).) Section 1798.24(c) has no such exceptions. Accordingly, a covered entity would find it impossible to comply with both this provision and federal requirements in cases where the exceptions in HIPAA would be applicable and required. Section 1798.24(c) also stands as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 160.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).).

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Yes. HIPAA allows a covered entity to not treat a personal representative as the individual if the covered entity: (1) has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by the personal representative or that treating the personal representative as the personal representative could endanger the individual; or (2) the covered entity, in the exercise of its professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual’s personal representative. (45 C.F.R. § 164.502(g)(5).) Section 1798.24(c) has no such exceptions. Thus, in cases where the exceptions in HIPAA would be applicable and required, Section 1798.24(c) would, “[w]ith respect to the rights of an individual who is the subject of the individually identifiable health information of access to or amendment of individually identifiable health information, permit[] greater rights of access or amendment, as applicable.” (45 C.F.R. § 160.202 (definition of “more stringent”, subsection (2).)

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(c), only.

**Civil Code Section 1798.24(d):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(d) To those officers, employees, attorneys, agents, or volunteers of the agency which has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA does not allow for the release of protected health information on the sole grounds that a disclosure may be “relevant and necessary in the ordinary course of the performance of” covered entities’ officers, employees, attorneys, agents, or volunteers. Pursuant to HIPAA, such releases would require an authorization from the individual who is the subject of the protected health information pursuant to Sections 164.502, 164.506 and 164.508 of HIPAA. Accordingly, a covered entity would find it impossible to comply with both this provision and federal requirements and this provision would also stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202))?**

Yes. This provision of law “affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA  
(45 C.F.R. § 160.202)?)

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule section 164.508, only.



**Civil Code Section 1798.24(e):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA does not provide for releases of protected health information based solely on the necessity of a covered entity to perform, generally, its constitutional or statutory duties. Pursuant to HIPAA, such releases would require authorization from the individual who is the subject of the protected health information pursuant to Sections 164.502, 164.506 and 164.508 of HIPAA. Accordingly, a covered entity would find it impossible to comply with both this provision and federal requirements and this provision would also stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Yes. This provision of law affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, sections 164.502, 164.506 and 164.508, only.

**Civil Code Section 1798.24(f):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(f) To a governmental entity when required by state or federal law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. With respect to disclosures required by State law or by federal law other than HIPAA, HIPAA provides that:

“[a] covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.”

(45 C.F.R. § 164.512(a)(1).)

However, HIPAA also provides that:

“A covered entity must meet the requirements described in paragraph (c), (e), or (f) of [Section 164.512] for uses or disclosures required by law.”

(45 C.F.R. § 164.512(a)(2).).

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(f) only.

**Civil Code Section 1798.24(g):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(g) Pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The HIPAA privacy rules “permit covered entities to make disclosures that are required by State Freedom of Information Act (FOIA) laws[,]” such as the California Public Records Act. (45 C.F.R. § 164.512(a); preamble, 65 F.R. 82597.) Section 164.512(a) of HIPAA permits covered entities to disclose protected health information when such disclosures are required by other laws as long as they follow the requirements of those laws. The California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, requires state agencies to make their public records available for inspection and copying by the public (Gov. Code §§ 6253, 6256) unless a particular record is "exempt" from disclosure (Gov. Code § 6254). However, Government Code Section 6254(c) provides that “personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy,” are exempt from disclosure under the Public Records Act. Accordingly, a covered entity would not find it impossible to comply with both this provision and federal requirements and the law would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).) . [NOTE: See, HIPAA Preemption Analysis of the California Public Records Act.]

State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)



**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(g), only.

**Civil Code Section 1798.24(h):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(h) To a person who has provided the agency with advance adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA provides that “[h]ealth information that does not identify an individual and with respect which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.” (45 C.F.R. §§ 164.514(a), (b); 164.502(d).) And although HIPAA contains extensive requirements for determining whether or not protected health information has been de-identified, a covered entity would not find it impossible to comply with both this provision and federal requirements, and the law would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

FINAL

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(h) and HIPAA Privacy Regulations relating to research.



**Civil Code Section 1798.24(i)**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(i) Pursuant to a determination by the agency which maintains information that compelling circumstances exist which affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The applicable HIPAA provisions in this area are: 164.502(g)(5), 164.510(b)(3), 164.512(j) and 164.524(a)(3)(i). In addition, the last sentence of Section 1798.24(i) that “[d]isclosure shall not be made if it is in conflict with other state or federal laws[,]” expressly makes this subsection on its face not contrary to HIPAA. Thus, a covered entity would not find it impossible to comply with both this provision and federal requirements and the law would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(i) and HIPAA privacy regulations sections 164.502(g)(5), 164.510(b)(3), 164.512(j) and 164.524(a)(3)(i).

**Civil Code Section 1798.24(j):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(j) To the State Archives of the State of California as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA makes no provision for the release of protected health information to States’ archives, or to any other entity as a record which has sufficient historical or other value to warrant its continued preservation by the State government, or to the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value. Pursuant to HIPAA, such releases would require an authorization from the individual who is the subject of the protected health information pursuant to Sections 164.502, 164.506 and 164.508 of HIPAA. Accordingly, a covered entity would find it impossible to comply with both this provision and federal requirements and this provision would also stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

No. This provision of law neither “has the specific purpose of protecting the privacy of health information[nor] affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA  
(45 C.F.R. § 160.202)?)

Inapplicable.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, sections 164.502, 164.506  
and 164.508, as applicable, only.

**Civil Code Section 1798.24(k):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. Although HIPAA privacy rules allow for disclosures pursuant to a subpoena, court order, or other compulsory legal process, they also contain requirements which are not required by this subsection. First, HIPAA requires that such disclosures be “in the course of any judicial or administrative proceeding.” (45 C.F.R. § 164.512(e)(1).) The California provision has no such requirement. Pursuant to HIPAA, such disclosures must also be limited, if in response to an order of a court or administrative tribunal, to “only the protected health information expressly authorized by such order.” (45 C.F.R. § 164.512(e)(1)(i).) Subsection 1798.24(k) does not have this requirement. Lastly, under HIPAA, if the disclosure is in response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal, the covered entity must receive a written statement and documentation showing that the requesting party either: (1) satisfactory assurances that reasonable efforts have been made to give the individual whose information has been requested notice of the request; or (2) satisfactory assurances that the party seeking such information has made reasonable efforts to secure a protective order that will guard the confidentiality of the information. (45 C.F.R. § 164.512(e)(1)(ii)(A), (B).) HIPAA allows covered entities to meet these requirements by making a reasonable effort itself to notify the individual whose information has been requested or to seek a qualified protective order.

(45 C.F.R. § 164.512(e)(1)(vi).) Subsection 1798.24(k) does not have these exact requirements, but does allow disclosure if the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

This subsection is therefore contrary to HIPAA because a covered entity would find it impossible to comply with both this provision and federal requirements and this provision would also stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).).

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, section 164.512(e), only.

**Civil Code Section 1798.24(l):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(l) To any person pursuant to a search warrant.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. Although HIPAA privacy rules allow for disclosures pursuant to a search warrant, they also contain requirements which are not required by this subsection. First, HIPAA requires that a disclosure pursuant to a search warrant be “for a law enforcement purpose.” (45 C.F.R. § 164.512(f).) The California provision has no such requirement. Such a disclosure must also be, pursuant to HIPAA, “to a law enforcement official.” (*Ibid.*) “Law enforcement official” is defined in HIPAA to mean “an officer or employee of any agency or authority of the United States, a State, a Territory, a political subdivision of a State or Territory, or an Indian tribe, who is empowered by law to: (investigate or conduct an official inquiry into a potential violation of law; or (2) prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” (45 C.F.R. § 164.501.) Subsection 1798.24(l) does not have this requirement, and instead allows the disclosure to “any person.” Lastly, such a disclosure must be pursuant to a “court-ordered warrant.” (*Ibid.*) This subsection has no such limitation. Accordingly, this subsection is contrary to HIPAA because a covered entity would find it impossible to comply with both this provision and federal requirements and this provision would also stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule section 164.512(f), only.



**Civil Code Section 1798.24(m):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

(See, HIPAA Preemption Analysis of the referenced provisions of the Vehicle Code.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

(See, HIPAA Preemption Analysis of the referenced provisions of the Vehicle Code.)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

(See, HIPAA Preemption Analysis of the referenced provisions of the Vehicle Code.)

**Controlling Law(s):**

(See, HIPAA Preemption Analysis of the referenced provisions of the Vehicle Code.)

**Civil Code Section 1798.24(n):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. A covered entity “ may use or disclose protected health information for treatment, payment, or health care operations...provided that such use or disclosure is consistent with other [HIPAA] requirements.” (45 C.F.R. § 164.506(a).) However, an authorization would be required to utilize psychotherapy notes (except under specified circumstances). (45 C.F.R. § 164.508(a)(2).) Thus the California Medical Assistance (Medi-Cal) program may verify or pay Medi-Cal health care service claims (unless psychotherapy notes are needed to do so), because “payment” is defined by HIPAA to include the activities undertaken by a covered health plan to obtain or provide reimbursement for the provision of health care, and include: (1) determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims; (2) billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing; (3) review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges. (45 C.F.R. § 164.501 (definition of “payment”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

PARTIAL PREEMPTION. Civil Code section 1798.24(n) except if psychotherapy notes are required in connection with payment of a claim, then HIPAA privacy regulation section 164.508(a)(2).).

**Civil Code Section 1798.24(o):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The language in the last sentence of Section 1798.24(o) that “unless the disclosure is otherwise prohibited by law[,]” expressly makes this subsection on its face not contrary to HIPAA. Thus, a covered entity would not find it impossible to comply with both this provision and federal requirements and the law would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.24(o), and applicable HIPAA regulations.

**Civil Code Section 1798.24(p):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law which the agency is responsible for enforcing.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. Pursuant to HIPAA, “[a] covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.” (45 C.F.R. § 164.512(a)(1).) However, “Required by law” as defined by HIPAA is narrowly defined to mean:

“a mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if

payment is sought under a government program providing public benefits.”

(45 C.F.R. § 164.501 (definition of “required by law”).)

More importantly, in connection with its treatment of “required by law” disclosures, HIPAA also provides that:

“A covered entity must meet the requirements described in paragraph (c), (e), or (f) of [Section 164.512] for uses or disclosures required by law.”

(45 C.F.R. § 164.512(a)(2).)

The areas covered by paragraphs (c), (e), and (f) of Section 164.512 include disclosures about victims of abuse, neglect or domestic violence, and covered entities must meet additional HIPAA requirements in each of these areas to be able to rely on the “required by law” exception. (45 C.F.R. § 164.512(a)(2).) This section of State law has no similar requirements or restrictions. Thus, a covered entity would find it impossible to comply with both this provision and federal requirements because it: (1) does not limit or define “required by law” to narrow the scope of the provision; and (2) does not provide for the additional requirements HIPAA contains for certain types of disclosures. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, sections 164.501, 164.512(a), if applicable, only.



**Civil Code Section 1798.24(q):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Pursuant to HIPAA, “[h]ealth information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.” (45 C.F.R. § 164.514(a).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(q) and HIPAA Privacy Rule section 164.514(a).

**Civil Code Section 1798.24(r):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Pursuant to HIPAA, “[h]ealth information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.” (45 C.F.R. § 164.514(a).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(r) and HIPAA Privacy Rule section 164.514(a).

**Civil Code Section 1798.24(s):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA makes no provision for disclosure of protected health information to a committee of the Legislature or to a Member of the Legislature, or to the staff of the member when authorized in writing by the member, even where the member has permission to obtain the information from the individual to whom the information pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual. Pursuant to HIPAA, such releases would require authorization from the individual who is the subject of the protected health information sought to the covered entity which was in possession of the protected health information, pursuant to Sections 164.502, 164.506 and 164.508 of HIPAA. Accordingly, a covered entity would find it impossible to comply with both this provision and federal requirements and this provision would also stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 160.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Yes. "Relates to the privacy of individually identifiable health information" means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of "Relates to the privacy of individually identifiable health information").)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, sections 164.502, 164.506 and 164.508, as applicable, only.

**Civil Code Section 1798.24(t):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(t) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information includes assurances of the need for personal information, procedures for protecting the confidentiality of the information and assurances that the personal identity of the subject shall not be further disclosed in individually identifiable form.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Covered entities would not find it impossible to comply with both Section 1798.24(t) and HIPAA requirements. (45 C.F.R. § 160.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(t) and HIPAA Privacy Rule Section 164.512(i).

**Civil Code Section 1798.24(u):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The "Motor Vehicle Theft Prevention Act" (Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code) does not provide for or even mention releases to insurers in its current form. Former Section 10903 of the Vehicle Code (which related to the release of information) was repealed in its entirety in 1989. (Stats. 1989, ch. 1119, § 7.) Accordingly, this law is no longer operative. No further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

FINAL

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NONE. Section 1798.24(u) is no longer operative.



**Civil Code Section 1798.24(v):**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

...

(v) Pursuant to Section 1909, 8009, or 18396 of the Financial Code.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The information covered by the Financial Code sections cited in this provision is not protected health information pursuant to HIPAA. (45 C.F.R. §§ 160.103 (definition of “individually identifiable health information”), 164.501 (definition of “protected health information”).) A covered entity would not find it impossible to comply with both this provision and federal requirements and the law would not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 164.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.24(v), only.

**Civil Code Section 1798.24a:**

“Notwithstanding Section 1798.24, information may be disclosed to any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest. However, any summary criminal history information that may be disclosed pursuant to this section shall be limited to information pertaining to criminal convictions.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA makes no provision for disclosure of protected health information to assist in the screening of prospective concessionaires. Such releases would require authorization from the individual who is the subject of the protected health information sought to the covered entity which was in possession of the protected health information, pursuant to Sections 164.502, 164.506, and 164.508 of HIPAA. Accordingly, a covered entity would find it impossible to comply with both this provision and federal requirements and this provision would also stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 160.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202)

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



(definition of "Relates to the privacy of individually identifiable health information").)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, sections 164.502, 164.506 and 164.508, as applicable, only.

**Civil Code Section 1798.24b:**

“(a) Notwithstanding Section 1798.24, except the last paragraph thereof, information may be disclosed to the protection and advocacy agency designated by the Governor in this state pursuant to federal law to protect and advocate the rights of persons with developmental disabilities and persons with mental illness, as described in Division 4.7 (commencing with Section 4900) of the Welfare and Institutions Code.

(b) Information that may be disclosed pursuant to this section includes all of the following information:

- (1) Name.
- (2) Address.
- (3) Telephone number.

(4) Any other information necessary to identify that person whose consent is necessary for either of the following purposes:

(A) To enable the protection and advocacy agency to exercise its authority and investigate incidents of abuse or neglect of persons with developmental disabilities or persons with mental illness.

(B) To obtain access to records pursuant to Section 4903 of the Welfare and Institutions Code.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No, if the disclosure is required to investigate abuse and neglect. Such disclosures are authorized by Section 164.512(a) of the HIPAA Privacy Rule. (See also, Preamble to HIPAA Privacy Rule, p. 82594.)

Yes, if the disclosure is not required to investigate abuse and neglect. . HIPAA makes no provision for disclosure of protected health information to protection and advocacy agencies for cases other than those required to investigate abuse and neglect. Pursuant to HIPAA, such releases would require an authorization from the individual who is the subject of the protected health information sought to the covered entity which was in possession of the protected

health information. (45 C.F.R. § 164.508.) Accordingly, a covered entity would find it impossible to comply with both this provision and federal requirements and this provision would also stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. (45 C.F.R. § 160.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))?** (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))?** (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)

No.

**Controlling Law(s):**

PARTIAL PREEMPTION. Section 1798.24b in cases where the disclosure is required to investigate abuse and neglect. In all other cases, HIPAA provisions concerning the release of protected health information pursuant to an authorization (or use of any applicable HIPAA exception to the HIPAA authorization requirements).

**Article 7  
Accounting for Disclosures**

**Civil Code Section 1798.25:**

“Each agency shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to subdivision (i), (k), (l), (o), or (p) of Section 1798.24. This accounting shall also be required for disclosures made pursuant to subdivision (e) or (f) of Section 1798.24 unless notice of the type of disclosure has been provided pursuant to Sections 1798.9 and 1798.10. The accounting shall also include the name, title, and business address of the person or agency to whom the disclosure was made. For the purpose of an accounting of a disclosure made under subdivision (o) of Section 1798.24, it shall be sufficient for a law enforcement or regulatory agency to record the date of disclosure, the law enforcement or regulatory agency requesting the disclosure, and whether the purpose of the disclosure is for an investigation of unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or regulatory purposes by that agency.

Routine disclosures of information pertaining to crimes, offenders, and suspected offenders to law enforcement or regulatory agencies of federal, state, and local government shall be deemed to be disclosures pursuant to subdivision (e) of Section 1798.24 for the purpose of meeting this requirement.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. A covered entity would not find it impossible to comply with both this subdivision and HIPAA requirements; and this provision of State law does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives HIPAA. (45 C.F.R. § 160.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.25. [NOTE: Covered entities must also comply with HIPAA rules regarding the accounting of disclosures of protected health information separate and apart from the requirements of Civil Code section 1798.25. (See, 45 C.F.R. § 164.528.).]

**Civil Code Section 1798.26:**

“With respect to the sale of information concerning the registration of any vehicle or the sale of information from the files of drivers’ licenses, the Department of Motor Vehicles shall, by regulation, establish administrative procedures under which any person making a request for information shall be required to identify himself or herself and state the reason for making the request. These procedures shall provide for the verification of the name and address of the person making a request for the information and the department may require the person to produce the information as it determines is necessary in order to ensure that the name and address of the person are his or her true name and address. These procedures may provide for a 10-day delay in the release of the requested information. These procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.

The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA privacy rules prohibit the sale of protected health information without an authorization from the individual who is the subject of the protected health information. (45 C.F.R. § 164.508(a).) Thus, a covered entity would find it impossible to comply with both this section and HIPAA requirements; and this provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives HIPAA. (45 C.F.R. § 160.202 (definition of “contrary”).)



**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA privacy rule section 164.508, only.

**Civil Code Section 1798.27:**

“Each agency shall retain the accounting made pursuant to Section 1798.25 for at least three years after the disclosure for which the accounting is made, or until the record is destroyed, whichever is shorter.

Nothing in this section shall be construed to require retention of the original documents for a three-year period, providing that the agency can otherwise comply with the requirements of this section.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. A covered entity would not find it impossible to comply with both this subdivision and HIPAA requirements; and this provision of State law does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives HIPAA. (45 C.F.R. § 160.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202))?**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202))?**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.27, only. [NOTE: Covered entities must also comply with HIPAA rules regarding the retention of accountings of disclosures of protected health information separate and apart from the requirements of Civil Code section 1798.27. (See, 45 C.F.R. § 164.528(d).)]

**Civil Code Section 1798.28:**

“Each agency, after July 1, 1978, shall inform any person or agency to whom a record containing personal information has been disclosed during the preceding three years of any correction of an error or notation of dispute made pursuant to Sections 1798.35 and 1798.36 if (1) an accounting of the disclosure is required by Section 1798.25 or 1798.26, and the accounting has not been destroyed pursuant to Section 1798.27, or (2) the information provides the name of the person or agency to whom the disclosure was made, or (3) the person who is the subject of the disclosed record provides the name of the person or agency to whom the information was disclosed.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. Sections 1798.35 and 1798.36 are preempted (or partially preempted) by HIPAA, rendering this section inoperative. No further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA privacy rule accounting for disclosures provisions, only.

**Civil Code Section 1798.29:**

“(a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (1) Social security number.
- (2) Driver's license number or California Identification Card number.
- (3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(f) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section, "notice" may be provided by one of the following methods:

- (1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the agency has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the agency's Web sitepage, if the agency maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.29, only.

**Article 8**  
**Access to Records and Administrative Remedies**

**Civil Code Section 1798.30:**

“Each agency shall either adopt regulations or publish guidelines specifying procedures to be followed in order fully to implement each of the rights of individuals set forth in this article.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) [NOTE: The section in HIPAA with similar requirements is 164.530(i).]

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.30, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.32:**

“Each individual shall have the right to inquire and be notified as to whether the agency maintains a record about himself or herself. Agencies shall take reasonable steps to assist individuals in making their requests sufficiently specific.

Any notice sent to an individual which in any way indicates that the agency maintains any record concerning that individual shall include the title and business address of the agency official responsible for maintaining the records, the procedures to be followed to gain access to the records, and the procedures to be followed for an individual to contest the contents of these records unless the individual has received this notice from the agency during the past year.

In implementing the right conferred by this section, an agency may specify in its rules or regulations reasonable times, places, and requirements for identifying an individual who requests access to a record, and for disclosing the contents of a record.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The HIPAA Privacy Rules also address the issue of individuals inquiring or being notified as to whether or not a covered entity maintains a record about the individual. “If the covered entity does not maintain the protected health information that is the subject of the individual’s request for access, and the covered entity knows where the requested information is maintained, the covered entity must inform the individual where to direct the request for access.” (45 C.F.R. § 164.524(d)(3).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.



**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.32 and HIPAA Privacy Rule section 164.524(a)(2), (d)(3).

**Civil Code Section 1798.33:**

“Each agency may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and shall not exceed ten cents (\$0.10) per page, unless the agency fee for copying is established by statute.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes, if the fee of ten cents (\$0.10) per page is less than the fee would be pursuant to HIPAA, i.e., only if the ten cents per page or the agency fee for copying established by statute is not “cost-based” and includes more than “the cost of supplies for and labor of copying the protected health information requested by the individual.” HIPAA provides with respect to fees that:

“If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of: (i) Copying, including the cost of supplies for and labor of copying, the protected health information requested by the individual; (ii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and (iii) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(ii) of this section.”

(45 C.F.R. § 164.524(c)(4).)

If ten cents (\$0.10) per page or the agency fee for copying established by statute is not “cost-based” and includes more than “the cost of supplies for and labor of copying the protected health information, it is impossible to comply with

both this law and HIPAA regulations, and the law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

If the fee charged for copying (ten cents (\$0.10) per page or the agency fee for copying established by statute) is not “cost-based” and includes more than “the cost of supplies for and labor of copying the protected health information requested by the individual,” then Civil Code section 1798.33 is not more stringent, because: (1) although the law prohibits or restricts a use or disclosure of individually identifiable health information in circumstances under which such use or disclosure otherwise would be permitted under HIPAA, the disclosure is to the individual who is the subject of the individually identifiable health information (45 C.F.R. § 160.202 “more stringent” definition, subsection (1)(ii)); and (2) the State law does not permit greater rights of access to individually identifiable health information by an individual who is the subject of the individually identifiable health information (45 C.F.R. § 160.202 “more stringent” definition, subsection (2)).

**Controlling Law(s):**

PARTIAL PREEMPTION. Civil Code section 1798.33, but only if ten cents (\$0.10) per page or the agency fee for copying established by statute is “cost-based” and does not include more than “the cost of supplies for and labor of copying the protected health information requested by the individual.” If ten cents (\$0.10) per page or the agency fee for copying established by statute is not “cost-based” and includes more than “the cost of supplies for and labor of copying the protected health, than Section 164.524(c)(4) of HIPAA.

**Civil Code Section 1798.34(a):**

“(a) Except as otherwise provided in this chapter, each agency shall permit any individual upon request and proper identification to inspect all the personal information in any record containing personal information and maintained by reference to an identifying particular assigned to the individual within 30 days of the agency's receipt of the request for active records, and within 60 days of the agency's receipt of the request for records that are geographically dispersed or which are inactive and in central storage. Failure to respond within these time limits shall be deemed denial. In addition, the individual shall be permitted to inspect any personal information about himself or herself where it is maintained by reference to an identifying particular other than that of the individual, if the agency knows or should know that the information exists. The individual also shall be permitted to inspect the accounting made pursuant to Article 7 (commencing with Section 1798.25).”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

Yes. The access to records by patients provided for in this subsection are “disclosures” to patients because, pursuant to HIPAA, “disclosure” means “the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the interpretation.” (45 C.F.R. § 164.501 (definition of “disclosure”) [emphasis added].) Moreover, these disclosures are required, rather than permitted.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.34(a), only (by operation of HIPAA privacy regulations section 164.512(a)(1)).

**Civil Code Section 1798.34(b):**

“(b) The agency shall permit the individual, and, upon the individual's request, another person of the individual's own choosing to inspect all the personal information in the record and have an exact copy made of all or any portion thereof within 15 days of the inspection. It may require the individual to furnish a written statement authorizing disclosure of the individual's record to another person of the individual's choosing.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

Yes. The access to records by patients provided for in this subsection are “disclosures” to patients because, pursuant to HIPAA, “disclosure” means “the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the interpretation.” (45 C.F.R. § 164.501 (definition of “disclosure”) [emphasis added].) Moreover, these disclosures are required, rather than permitted. Therefore HIPAA section 164.512(a) applies.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202))?**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202))?**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTED. Civil Code section 1798.34(b), only (by operation of HIPAA Privacy Rule section 164.512(a)(1)).

**Civil Code Section 1798.34(c):**

“(c) The agency shall present the information in the record in a form reasonably comprehensible to the general public.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

Yes. The access to records by patients provided for in this subsection are “disclosures” to patients because, pursuant to HIPAA, “disclosure” means “the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the interpretation.” (45 C.F.R. § 164.501 (definition of “disclosure”) [emphasis added].) Moreover, these disclosures are required, rather than permitted. Therefore HIPAA section 164.512(a) applies.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.34(c), only (by operation of HIPAA Privacy regulations section 164.512(a)(1)).

**Civil Code Section 1798.34(d):**

“(d) Whenever an agency is unable to access a record by reference to name only, or when access by name only would impose an unreasonable administrative burden, it may require the individual to submit such other identifying information as will facilitate access to the record.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA has no analogous requirement or allowance, but does require covered entities to verify the identity of persons requesting PHI and the authority of any such person to have access to PHI, if the covered entity does not know the identity of the person. In connection with this, covered entities must obtain any documentation, statements, or representations, orally or in writing, from the person requesting the PHI when such documentation, statement or representation is a condition of disclosure under the HIPAA privacy regulations.. (45 C.F.R. § 164.514.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.34(d) and HIPAA Privacy Rule section 164.514.



**Civil Code Section 1798.34(e):**

“(e) When an individual is entitled under this chapter to gain access to the information in a record containing personal information, the information or a true copy thereof shall be made available to the individual at a location near the residence of the individual or by mail, whenever reasonable.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

Yes. The access to records by patients provided for in this subsection are “disclosures” to patients because, pursuant to HIPAA, “disclosure” means “the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the interpretation.” (45 C.F.R. § 164.501 (definition of “disclosure”) [emphasis added].) Moreover, these disclosures are required, rather than permitted. Therefore HIPAA section 164.512(a) applies.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.34(c), only (by operation of HIPAA Privacy Rule section 164.512(a)).

**Civil Code Section 1798.35:**

“Each agency shall permit an individual to request in writing an amendment of a record and, shall within 30 days of the date of receipt of such request:

(a) Make each correction in accordance with the individual's request of any portion of a record which the individual believes is not accurate, relevant, timely, or complete and inform the individual of the corrections made in accordance with their request; or

(b) Inform the individual of its refusal to amend the record in accordance with such individual's request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the head of the agency or an official specifically designated by the head of the agency of the refusal to amend, and the name, title, and business address of the reviewing official.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA privacy rules allow a covered entity 60 days, rather than the 30 days specified in this section, to take action on an amendment request. (45 C.F.R. § 164.526(b)(2)(i).) In addition, HIPAA requires that if an amendment is made, in addition to notifying the individual who requested the amendment, must also make reasonable efforts to notify and provide the amendment to: (1) persons identified by the individual who requested the amendment as having received protected health information about the individual and needing the amendment; and (2) persons that the covered entity knows may have the protected health information and who may have relied, or could foreseeably rely on the information to the detriment of the individual. (45 C.F.R. § 164.526(c)(3).) The covered entity must also secure the agreement of the subject of the protected health information to notify and share the amended protected health information with the foregoing persons. (45 C.F.R. § 164.526(c)(2).) With respect to a refusal to amend, HIPAA mandates that such refusal may only be for specified reasons. (45 C.F.R. § 164.526(a)(2).) Moreover, the covered entity

must also inform the individual of the individual's right: (1) to file a written statement disagreeing with the denial; (2) to request to have his or her amendment request appended to his or her protected health information; (3) to complain to the federal HHS about the denial. HIPAA also has numerous other requirements connected with the amendment of records which are not in this section. (See, 45 C.F.R. §§ 164.526(d)-(f).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. "Relates to the privacy of individually identifiable health information" means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of "Relates to the privacy of individually identifiable health information").)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Yes and no. The 30-day timeframe to take action on an amendment request in this section is more stringent than HIPAA because it "permits greater rights of amendment" than HIPAA privacy regulations "[w]ith respect to the rights of an individual who is the subject of the individually identifiable health information of amendment of...individually identifiable health information[.]" (45 C.F.R. § 160.202 (definition of "more stringent", subsection (2))). However, the numerous other HIPAA requirements connected with the amendment of records--which are not in this section--make the remainder of this section less stringent than HIPAA. (See, 45 C.F.R. §§ 164.526(d)-(f).)

**Controlling Law(s):**

PARTIAL PREEMPTION. HIPAA Privacy Rule section 164.526. However, covered entities must take action on an amendment request within 30 days of the date of receipt of such request, rather than the 60 days allowed by HIPAA.

**Civil Code Section 1798.36:**

“Each agency shall permit any individual who disagrees with the refusal of the agency to amend a record to request a review of such refusal by the head of the agency or an official specifically designated by the head of such agency, and, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such review period by 30 days. If, after such review, the reviewing official refuses to amend the record in accordance with the request, the agency shall permit the individual to file with the agency a statement of reasonable length setting forth the reasons for the individual's disagreement.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA has numerous other requirements connected with a denial of a record amendment request which are not in this section. (See, 45 C.F.R. §§ 164.526(d)-(f).) (See, preemption analysis of Civ. Code § 1798.35.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No. The numerous other HIPAA requirements connected with a denial of amendment of records--which are not in this section--make this section less stringent than HIPAA. (See, 45 C.F.R. §§ 164.526(d)-(f).)

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule sections 164.526, 164.530(d), only.

**Civil Code Section 1798.37:**

“The agency, with respect to any disclosure containing information about which the individual has filed a statement of disagreement, shall clearly note any portion of the record which is disputed and make available copies of such individual's statement and copies of a concise statement of the reasons of the agency for not making the amendment to any person or agency to whom the disputed record has been or is disclosed.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Non-Section 1178(a)(2)(B) “Carve Out”?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA requires that if a written statement disagreeing with the denial is filed by an individual, the covered entity must “append or otherwise link ...the individual’s statement of disagreement...to the designated record set, and include the statement (or a summary) with any subsequent disclosure--rather than simply providing that copies of the statement “be made available to any person or agency to whom the disputed record has been or is disclosed. (45 C.F.R. §§ 164.526(d)(4).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No. The HIPAA requirements connected with a statement of disagreement--which are not in this section--make this section less stringent than HIPAA.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule section 164.526(d), only.

**Civil Code Section 1798.38:**

“If information, including letters of recommendation, compiled for the purpose of determining suitability, eligibility, or qualifications for employment, advancement, renewal of appointment or promotion, status as adoptive parents, or for the receipt of state contracts, or for licensing purposes, was received with the promise or, prior to July 1, 1978, with the understanding that the identity of the source of the information would be held in confidence and the source is not in a supervisory position with respect to the individual to whom the record pertains, the agency shall fully inform the individual of all personal information about that individual without identification of the source. This may be done by providing a copy of the text of the material with only such deletions as are necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the agency shall insure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications, or be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications. In institutions of higher education, "supervisory positions" shall not be deemed to include chairpersons of academic departments.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA privacy rules provide that “[a]n individual's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.” (45 C.F.R. § 164.524(a)(2)(v).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**



**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.38 and HIPAA Privacy Rule section 164.524(a)(2)(v).

**Civil Code Section 1798.39:**

“Sections 1798.35, 1798.36, and 1798.37 shall not apply to any record evidencing property rights.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition, a “record evidencing property rights” is not protected health information. In order to be “protected health information”, the information must first relate to the past, present, or future physical or mental health or condition of an individual, or to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual. Next the information must have been created or received by a health care provider, health plan, employer, or health care clearinghouse. Lastly, to be protected by HIPAA, the information must identify the individual, or be information for which there is a reasonable basis to believe can be used to identify the individual. (45 C.F.R. §§ 164.501, 160.103.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.39, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.40(a):**

“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

(a) Is compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA exempts from the right of access it gives to individuals “[I]nformation compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding[.]” (45 C.F.R. § 164.524(a)(1)(ii).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.40(a), only (by operation of HIPAA privacy rule section 164.524(a)(1)(ii)).

**Civil Code Section 1798.40(b):**

“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

...

(b) Is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA exempts from the right of access it gives to individuals “[I]nformation compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding[.]” (45 C.F.R. § 164.524(a)(1)(ii).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.40(b), only (by operation of HIPAA privacy rule section 164.524(a)(1)(ii)).

**Civil Code Section 1798.40(c):**

“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

...

(c) Is contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA exempts from the right of access it gives to individuals “[I]nformation compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding[.]” (45 C.F.R. § 164.524(a)(1)(ii).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.40(c), only (by operation of HIPAA Privacy Rule section 164.524(a)(1)(ii)).

**Civil Code Section 1798.40(d):**

“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

...

(d) Is maintained for the purpose of an investigation of an individual's fitness for licensure or public employment, or of a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation, or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Section 1798.38.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA exempts from the right of access it gives to individuals “[I]nformation compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding[.]” (45 C.F.R. § 164.524(a)(1)(ii).) Investigations of an individual's fitness for licensure or public employment, or of a grievance or complaint, or a suspected civil offense, fit this exception to access.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.40(d) and HIPAA Privacy Rule section 164.524(a)(1)(ii).



**Civil Code Section 1798.40(e):**

“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

...

(e) Would compromise the objectivity or fairness of a competitive examination for appointment or promotion in public service, or to determine fitness for licensure, or to determine scholastic aptitude.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes, if the disclosure is requested by the person who is the subject of the protected health information, otherwise no.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No if the disclosure is requested by the person who is the subject of the protected health information, because it restricts disclosure of individually identifiable health information “to the individual who is the subject of the individually identifiable health information.” (45 C.F.R. § 160.202 “more stringent” definition, subsection (1)(ii).)

FINAL

**Controlling Law(s):**

PARTIAL PREEMPTION. Civil Code section 1798.40(e) if the disclosure is not requested by the person who is the subject of the protected health information. Otherwise HIPAA Privacy Rule section concerning authorizations.

**Civil Code Section 1798.40(f):**

“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

...

(f) Pertains to the physical or psychological condition of the individual, if the agency determines that disclosure would be detrimental to the individual. The information shall, upon the individual's written authorization, be disclosed to a licensed medical practitioner or psychologist designated by the individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA does provide for the denial of access to records by an individual who is the subject of the records on the basis that “the access requested is reasonably likely to endanger the life or physical safety of the individual....” (45 C.F.R. § 164.524(a)(3)(i).) However, HIPAA also mandates that the determination be made “by a licensed health care professional...in the exercise of professional judgment[,]” and not merely by an agency or non-professional individual. HIPAA also limits access in these circumstances only in the event of potential endangerment of “the life or physical safety of the individual[,]” rather than for a disclosure that would merely be “detrimental to the individual.” HIPAA also makes no provision for the alternative of disclosing the information to “a licensed medical practitioner or psychologist designated by the individual” (or anyone else) in the event access by the individual is denied.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202

(definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No. The State law does not permit greater rights of access to individually identifiable health information by an individual who is the subject of the individually identifiable health information (45 C.F.R. § 160.202 “more stringent” definition, subsection (2)).

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, section 164.524(a)(3), only.

**Civil Code Section 1798.40(g):**

“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

...

(g) Relates to the settlement of claims for work related illnesses or injuries and is maintained exclusively by the State Compensation Insurance Fund.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Pursuant to HIPAA privacy regulations, “[a] covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers’ compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.” (45 C.F.R. § 164.512(l).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.40(g), only (by operation of HIPAA Privacy Rule section 164.512(l)).

**Civil Code Section 1798.40(h):**

“This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

...

(h) Is required by statute to be withheld from the individual to whom it pertains.

This section shall not be construed to deny an individual access to information relating to him or her if access is allowed by another statute or decisional law of this state.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) The other statutes referred to in this section need to be looked at separately for preemption.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.40(h), only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.41(a):**

“(a) Except as provided in subdivision (c), if the agency determines that information requested pursuant to Section 1798.34 is exempt from access, it shall inform the individual in writing of the agency's finding that disclosure is not required by law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Covered entities must in addition comply with the provisions concerning denial of access to records set forth in HIPAA sections 164.524(a)(3) and (d).

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.41(a) and HIPAA Privacy Rule section 164.524(a)(3) and (d).



**Civil Code Section 1798.41(b):**

“(b) Except as provided in subdivision (c), each agency shall conduct a review of its determination that particular information is exempt from access pursuant to Section 1798.40, within 30 days from the receipt of a request by an individual directly affected by the determination, and inform the individual in writing of the findings of the review. The review shall be conducted by the head of the agency or an official specifically designated by the head of the agency.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. Pursuant to HIPAA, “[I]f access is denied...the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny. The covered entity must provide or deny access in accordance with the determination of the reviewing official....” (45 C.F.R. § 164.524(a)(4).) In addition,

“If the individual has requested a review of a denial...the covered entity must designate a licensed health care professional, who was not directly involved in the denial to review the decision to deny access. The covered entity must promptly refer a request for review to such designated reviewing official. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested based on the standards in paragraph (a)(3) of [Section 164.524]. The covered entity must promptly provide written notice to the individual of the determination of the designated reviewing official and take other action as required by this section to carry out the designated reviewing official's determination.

(45 C.F.R. § 164.524(d)(4).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule section 164.524(a)(4), (d)(4), only.

**Civil Code Section 1798.41(c):**

“(c) If the agency believes that compliance with subdivision (a) would seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the record, it may petition the presiding judge of the superior court of the county in which the record is maintained to issue an ex parte order authorizing the agency to respond to the individual that no record is maintained. All proceedings before the court shall be in camera. If the presiding judge finds that there are reasonable grounds to believe that compliance with subdivision (a) will seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or will endanger the life of an informant or other person submitting information contained in the record, the judge shall issue an order authorizing the agency to respond to the individual that no record is maintained by the agency. The order shall not be issued for longer than 30 days but can be renewed at 30-day intervals. If a request pursuant to this section is received after the expiration of the order, the agency must either respond pursuant to subdivision (a) or seek a new order pursuant to this subdivision.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA does provide for the denial of access to records by an individual who is the subject of the records on the basis that “the access requested is reasonably likely to endanger the life or physical safety of the individual....” (45 C.F.R. § 164.524(a)(3)(i).) And HIPAA also mandates that the determination be made “by a licensed health care professional...in the exercise of professional judgment[,]” and not merely by an agency or non-professional individual. However, HIPAA limits access in these circumstances only in the event of potential endangerment of “the life or physical safety of the individual[,]” rather than for a disclosure that would “seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to

prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the record.”

HIPAA also provides that correctional institutions “may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.” (45 C.F.R. § 164.524(a)(2)(ii).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule section 164.524(a)(2), (3), only.

**Civil Code Section 1798.42:**

“In disclosing information contained in a record to an individual, an agency shall not disclose any personal information relating to another individual which may be contained in the record. To comply with this section, an agency shall, in disclosing information, delete from disclosure such information as may be necessary. This section shall not be construed to authorize withholding the identities of sources except as provided in Sections 1798.38 and 1798.40.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA only provides that “an individual has a right of access to inspect and obtain a copy of protected health information about the individual....” (45 C.F.R. § 164.524(a), (d)(1).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.42, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.43:**

“In disclosing information contained in a record to an individual, an agency need not disclose any information pertaining to that individual which is exempt under Section 1798.40. To comply with this section, an agency may, in disclosing personal information contained in a record, delete from the disclosure any exempt information.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes, if the grounds for exemption do not comply with HIPAA (see analyses of sections 1798.40(a)-(h), above). Otherwise no, because deleting exempt material from a disclosure pursuant to a request for access also comports with HIPAA, which mandates that, “[t]he covered entity must, to the extent possible, give the individual access to any other protected health information requested, after excluding the protected health information as to which the covered entity has a ground to deny access. (45 C.F.R. § 164.524(d)(1).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

PARTIAL PREEMPTION, Civil Code section 1798.43 (to the extent that sections 1798.40(a)-(h), comply with HIPAA), otherwise HIPAA Privacy Rule section 164.524(d)(1).

**Civil Code Section 1798.44:**

“This article applies to the rights of an individual to whom personal information pertains and not to the authority or right of any other person, agency, other state governmental entity, or governmental entity to obtain this information.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.44, only.



**Article 9  
Civil Remedies**

**Civil Code Section 1798.45:**

“An individual may bring a civil action against an agency whenever such agency does any of the following:

(a) Refuses to comply with an individual's lawful request to inspect pursuant to subdivision (a) of Section 1798.34.

(b) Fails to maintain any record concerning any individual with such accuracy, relevancy, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to the individual that may be made on the basis of such record, if, as a proximate result of such failure, a determination is made which is adverse to the individual.

(c) Fails to comply with any other provision of this chapter, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA does not provide for federal private rights of action by individuals whose protected health information has been improperly used or disclosed in violation of HIPAA regulations. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition:

“The fact that a state law allows an individual to file a lawsuit to protect privacy does not conflict with the HIPAA penalty provisions.”

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



(Id., at p. 82582.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.45, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.46:**

“In any suit brought under the provisions of subdivision (a) of Section 1798.45:

(a) The court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from the complainant. In such a suit the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld as being exempt from the individual's right of access and the burden is on the agency to sustain its action.

(b) The court shall assess against the agency reasonable attorney's fees and other litigation costs reasonably incurred in any suit under this section in which the complainant has prevailed. A party may be considered to have prevailed even though he or she does not prevail on all issues or against all parties.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. . “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition:

“The fact that a state law allows an individual to file a lawsuit to protect privacy does not conflict with the HIPAA penalty provisions.”

(Id., at p. 82582.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA  
(45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.46, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.47:**

“Any agency that fails to comply with any provision of this chapter may be enjoined by any court of competent jurisdiction. The court may make any order or judgment as may be necessary to prevent the use or employment by an agency of any practices which violate this chapter.

Actions for injunction under this section may be prosecuted by the Attorney General, or any district attorney in this state, in the name of the people of the State of California whether upon his or her own complaint, or of a member of the general public, or by any individual acting in his or her own behalf.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. With respect to the private right of action in this section, “[w]here State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition:

“The fact that a state law allows an individual to file a lawsuit to protect privacy does not conflict with the HIPAA penalty provisions.”

(Id., at p. 82582.)

With respect to the prosecution of a cause of action by government authorities provided for in this section:

“The HIPAA statute provides for only two types of penalties: fines and imprisonment. Both types of penalties could be imposed in addition to the same type of penalty imposed by a state law, and should not interfere with the

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



imposition of other types of penalties that may be available under state law.”

(ibid.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.47, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.48:**

“In any suit brought under the provisions of subdivision (b) or (c) of Section 1798.45, the agency shall be liable to the individual in an amount equal to the sum of:

(a) Actual damages sustained by the individual, including damages for mental suffering.

(b) The costs of the action together with reasonable attorney's fees as determined by the court.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. With respect to the private right of action in this section, “[w]here State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition:

“The fact that a state law allows an individual to file a lawsuit to protect privacy does not conflict with the HIPAA penalty provisions.”

(Id., at p. 82582.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202))?**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202))?**

Inapplicable.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.48, only. No related or analogous HIPAA provisions.



**Civil Code Section 1798.49:**

“An action to enforce any liability created under Sections 1798.45 to 1798.48, inclusive, may be brought in any court of competent jurisdiction in the county in which the complainant resides, or has his principal place of business, or in which the defendant's records are situated, within two years from the date on which the cause of action arises, except that where a defendant has materially and willfully misrepresented any information required under this section to be disclosed to an individual who is the subject of the information and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this section, the action may be brought at any time within two years after discovery by the complainant of the misrepresentation. Nothing in Sections 1798.45 to 1798.48, inclusive, shall be construed to authorize any civil action by reason of any injury sustained as the result of any information practice covered by this chapter prior to July 1, 1978.

The rights and remedies set forth in this chapter shall be deemed to be nonexclusive and are in addition to all those rights and remedies which are otherwise available under any other provision of law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. With respect to the private right of action in this section, “[w]here State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition:

“The fact that a state law allows an individual to file a lawsuit to protect privacy does not conflict with the HIPAA penalty provisions.”

(Id., at p. 82582.)

State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)



**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.49, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.50:**

“A civil action shall not lie under this article based upon an allegation that an opinion which is subjective in nature, as distinguished from a factual assertion, about an individual's qualifications, in connection with a personnel action concerning such an individual, was not accurate, relevant, timely, or complete.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.50, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.51:**

“Where a remedy other than those provided in Articles 8 and 9 is provided by law but is not available because of lapse of time an individual may obtain a correction to a record under this chapter but such correction shall not operate to revise or restore a right or remedy not provided by this chapter that has been barred because of lapse of time.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.51, only.

**Civil Code Section 1798.53:**

“Any person, other than an employee of the state or of a local government agency acting solely in his or her official capacity, who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal information maintained by a state agency or from "records" within a "system of records" (as these terms are defined in the Federal Privacy Act of 1974 (P. L. 93-579; 5 U.S.C. 552a)) maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual to whom the information pertains.

In any successful action brought under this section, the complainant, in addition to any special or general damages awarded, shall be awarded a minimum of two thousand five hundred dollars (\$2,500) in exemplary damages as well as attorney's fees and other litigation costs reasonably incurred in the suit.

The right, remedy, and cause of action set forth in this section shall be nonexclusive and is in addition to all other rights, remedies, and causes of action for invasion of privacy, inherent in Section 1 of Article I of the California Constitution.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA does not provide for federal private rights of action by individuals whose protected health information has been improperly used or disclosed in violation of HIPAA regulations. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition:

“The fact that a state law allows an individual to file a lawsuit to protect privacy does not conflict with the HIPAA penalty provisions.”

(Id., at p. 82582.)

With respect to the fines provided for in this section:

“The HIPAA statute provides for only two types of penalties: fines and imprisonment. Both types of penalties could be imposed in addition to the same type of penalty imposed by a state law, and should not interfere with the imposition of other types of penalties that may be available under state law.”

(Ibid.)

**Exception (45 C.F.R. § 160.203(b))?** (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))?** (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1978.53, only. No related or analogous HIPAA provisions.

**Article 10  
Penalties**

**Civil Code Section 1798.55:**

“The intentional violation of any provision of this chapter or of any rules or regulations adopted thereunder, by an officer or employee of any agency shall constitute a cause for discipline, including termination of employment.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.55, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.56:**

“Any person who willfully requests or obtains any record containing personal information from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000), or imprisoned not more than one year, or both.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. With respect to the criminal penalty in this section, “[w]here State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition:

“The HIPAA statute provides for only two types of penalties: fines and imprisonment. Both types of penalties could be imposed in addition to the same type of penalty imposed by a state law, and should not interfere with the imposition of other types of penalties that may be available under state law.”

(HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82582.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**



**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.56, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.57:**

“Except for disclosures which are otherwise required or permitted by law, the intentional disclosure of medical, psychiatric, or psychological information in violation of the disclosure provisions of this chapter is punishable as a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. With respect to the criminal penalty in this section, “[w]here State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) In addition:

“The HIPAA statute provides for only two types of penalties: fines and imprisonment. Both types of penalties could be imposed in addition to the same type of penalty imposed by a state law, and should not interfere with the imposition of other types of penalties that may be available under state law.”

(HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82582.)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.57, only. No related or analogous HIPAA provisions.

**Article 11  
Miscellaneous Provisions**

**Civil Code Section 1798.60:**

“An individual's name and address may not be distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. HIPAA privacy rules prohibit the distribution for commercial purposes, sale and rental of protected health information without an authorization from the individual who is the subject of the protected health information. (45 C.F.R. § 164.508(a)(3).) Thus, a covered entity would find it impossible to comply with both this section and HIPAA requirements; and this provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives HIPAA. (45 C.F.R. § 160.202 (definition of “contrary”).)

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, sections 164.502, 164.506 and 164.508, as applicable, only.

**Civil Code Section 1798.61:**

“(a) Nothing in this chapter shall prohibit the release of only names and addresses of persons possessing licenses to engage in professional occupations.

(b) Nothing in this chapter shall prohibit the release of only names and addresses of persons applying for licenses to engage in professional occupations for the sole purpose of providing those persons with informational materials relating to available professional educational materials or courses.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.61, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.62:**

“Upon written request of any individual, any agency which maintains a mailing list shall remove the individual's name and address from such list, except that such agency need not remove the individual's name if such name is exclusively used by the agency to directly contact the individual.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.62, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.63:**

“The provisions of this chapter shall be liberally construed so as to protect the rights of privacy arising under this chapter or under the Federal or State Constitution.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.63, only. No related or analogous HIPAA provisions.



**Civil Code Section 1798.64:**

“(a) Each agency record which is accepted by the Director of General Services for storage, processing, and servicing in accordance with provisions of the State Administrative Manual for the purposes of this chapter shall be considered to be maintained by the agency which deposited the record and shall continue to be subject to the provisions of this chapter. The Director of General Services shall not disclose the record except to the agency which maintains the record, or pursuant to rules established by such agency which are not inconsistent with the provisions of this chapter.

(b) Each agency record pertaining to an identifiable individual which was or is transferred to the State Archives as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, prior to or after July 1, 1978, shall, for the purposes of this chapter, be considered to be maintained by the archives.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes. The language in this provision mandating that records accepted by the Director of General Services “shall continue to be subject to the provisions of this chapter” is contrary to HIPAA to the extent that other provisions of the Information Practices Act (Civ. Code, Ch. 1, Tit. 1.8, Part 4, Div. 3) are preempted by HIPAA. The language in Section 1798.64 that “[t]he Director of General Services shall not disclose the record except to the agency which maintains the record, or pursuant to rules established by such agency which are not inconsistent with the provisions of this chapter[.]” may also be contrary to HIPAA if the “rules established by such agency” are preempted by HIPAA.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202))?**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of "Relates to the privacy of individually identifiable health information").)

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

No.

**Controlling Law(s):**

TOTAL PREEMPTION. HIPAA Privacy Rule, sections 164.502, 164.506 and 164.508, as applicable, only.

**Civil Code Section 1798.66:**

“The time limits specified in Article 8 (commencing with Section 1798.30) may be extended to 60 days by the Franchise Tax Board if the following conditions exist:

- (a) The request is made during the period January 1 through June 30; and
- (b) The records requested are stored on magnetic tape.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The Franchise Tax Board is not a covered entity pursuant to HIPAA.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.66, only.

**Civil Code Section 1798.67:**

“Where an agency has recorded a document creating a lien or encumbrance on real property in favor of the state, nothing herein shall prohibit any such agency from disclosing information relating to the identity of the person against whom such lien or encumbrance has been recorded for the purpose of distinguishing such person from another person bearing the same or a similar name.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. The information in documents recorded by agencies which create a lien or encumbrance on real property in favor of the state do not include information which is “protected health information” as defined by HIPAA. (45 C.F.R. § 164.501 (definition of “protected health information”).) “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



NO PREEMPTION. Civil Code section 1798.67, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.68:**

“(a) Information which is permitted to be disclosed under the provisions of subdivision (e), (f), or (o), of Section 1798.24 shall be provided when requested by a district attorney.

A district attorney may petition a court of competent jurisdiction to require disclosure of information when an agency fails or refuses to provide the requested information within 10 working days of a request. The court may require the agency to permit inspection unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

(b) Disclosure of information to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

Yes, with respect to information ostensibly permitted to be disclosed under the provisions of subdivision (e) and (f) of Section 1798.24, as those sections are preempted by HIPAA. (See analyses of Civ. Code §§ 1798.24(e), (f).) No, with respect to the provisions of subdivision (o).

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Yes. “Relates to the privacy of individually identifiable health information” means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way. (45 C.F.R. § 160.202 (definition of “Relates to the privacy of individually identifiable health information”).)

Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)

No.

**Controlling Law(s):**

PARTIAL PREEMPTION. Civil Code section 1798.24(o) and applicable HIPAA privacy regulations depending on the nature of the particular request for disclosure.

**Civil Code Section 1798.69:**

“(a) Except as provided in subdivision (b), the State Board of Equalization may not release the names and addresses of individuals who are registered with, or are holding licenses or permits issued by, the State Board of Equalization except to the extent necessary to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code.

(b) Nothing in this section shall prohibit the release by the State Board of Equalization to, or limit the use by, any federal or state agency, or local government, of any data collected by the board that is otherwise authorized by law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Subdivision (a), and does not affect or involve HIPAA. Accordingly, there is no further HIPAA analysis required. With respect to subdivision (b), data collected by the State Board of Equalization “that is otherwise authorized by law[,]” does not include data which is “protected health information” as defined by HIPAA. (45 C.F.R. § 164.501 (definition of “protected health information”).) “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**



**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.69, only. No related or analogous HIPAA provisions.

**Article 1**  
**Construction with Other Laws**

**Civil Code Section 1798.70:**

“This chapter shall be construed to supersede any other provision of state law, including Section 6253.5 of the Government Code, or any exemption in Section 6254 or 6255 of the Government Code, which authorizes any agency to withhold from an individual any record containing personal information which is otherwise accessible under the provisions of this chapter.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Sections 6253.5, 6254 and 6255 of the Government Code are part of the California Public Records Act, Government Code sections 6250, et seq. Civil Code section 1798.70 merely provides that the Information Practices Act supercedes the noted Public Records Act sections and does not affect or involve HIPAA directly. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)**



**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.70, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.71:**

“This chapter shall not be deemed to abridge or limit the rights of litigants, including parties to administrative proceedings, under the laws, or case law, of discovery of this state.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.71, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.72:**

“Nothing in this chapter shall be construed to authorize the disclosure of any record containing personal information, other than to the subject of such records, in violation of any other law.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Civil Code section 1798.72 merely provides that no provision of the Information Practices Act shall be construed to authorize the disclosure of any record containing personal information, other than to the subject of such records, in violation of any other law and does not affect or involve HIPAA directly. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.72, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.73:**

“Nothing in this chapter shall be construed to deny or limit any right of privacy arising under Section 1 of Article I of the California Constitution.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Pursuant to the State Constitution, “[a]ll people are by nature free and independent and have inalienable rights. Among these are...pursuing and obtaining...privacy.” (Cal. Const., art. I, § 1.) “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.73, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.74:**

“The provisions of Chapter 13 (commencing with Section 67110) of Part 40 of the Education Code shall, with regard to student records, prevail over the provisions of this chapter.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.74. No related or analogous HIPAA provisions. However, Chapter 13 of Part 40 of the Education Code was repealed in its entirety in 1995. (Stats. 1995, ch. 758, § 50 (A.B. 446).) Accordingly, this law is no longer operative.

**Civil Code Section 1798.75:**

“This chapter shall not be deemed to supersede Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, except as to the provisions of Sections 1798.60, 1798.69, and 1798.70.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Chapter 3.5 (Section 6250, et seq.) of Division 7 of Title 1 of the Government Code is the California Public Records Act. Civil Code section 1798.75 merely provides that, except for the provisions of Sections 1798.60, 1798.69, and 1798.70 of the Information Practices Act, the Information Practices Act shall not supercede the Public Records Act. Therefore, Civil Code section 1798.75 does not affect or involve HIPAA directly. Accordingly, there is no further HIPAA preemption analysis required. . [NOTE: See, HIPAA Preemption Analysis of the California Public Records Act.]

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.75, only. No related or analogous HIPAA provisions.



**Civil Code Section 1798.76:**

“Nothing in this chapter shall be construed to revoke, modify, or alter in any manner any statutory provision or any judicial decision which (a) authorizes an individual to gain access to any law enforcement record, or (b) authorizes discovery in criminal or civil litigation.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Civil Code section 1798.76 merely provides that the Information Practices Act shall be construed to revoke, modify, or alter any statutory provision or any judicial decision which authorizes an individual to gain access to any law enforcement record, or which authorizes discovery in criminal or civil litigation, and does not affect or involve HIPAA directly. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.76, only. No related or analogous HIPAA provisions.

FINAL

**Civil Code Section 1798.77:**

“Each agency shall ensure that no record containing personal information shall be modified, transferred, or destroyed to avoid compliance with any of the provisions of this chapter. In the event that an agency fails to comply with the provisions of this section, an individual may bring a civil action and seek the appropriate remedies and damages in accordance with the provisions of Article 9 (commencing with Section 1798.45).

An agency shall not remove or destroy personal information about an individual who has requested access to the information before allowing the individual access to the record containing the information.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. HIPAA has no provisions prohibiting covered entities from modifying, transferring, or destroying protected health information to avoid compliance with HIPAA, although this requirement should be implied from the requirements in HIPAA that covered entities “must keep such records...in such time and manner and containing such information as the Secretary may determine to be necessary to enable the Secretary to ascertain whether the covered entity has complied or is complying with [HIPAA]” (45 C.F.R. § 160.310(a), (c)), and that covered entities “must permit access by the Secretary...to...protected health information, that are pertinent to ascertaining compliance with [HIPAA]...[i]f the Secretary determines that exigent circumstances exist, such as when documents may be hidden or destroyed, a covered entity must permit access by the Secretary at any time and without notice.” (45 C.F.R. § 160.310(a), (c).) HIPAA also allows for the destruction of protected health information by business associates and plan sponsors. (See 45 C.F.R. §§ 164.504(e)(2)(ii)(I), 164.504(f)(2)(ii)(I).) In addition, HIPAA does not provide for federal private rights of action by individuals whose protected health information has been improperly modified or destroyed.

State Privacy Law HIPAA Preemption Analysis:  
Information Practices Act of 1977  
(Civ. Code § 1798, et seq.)



**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.77, only. No related or analogous HIPAA provisions.

**Civil Code Section 1798.78:**

“This chapter shall not be deemed to supersede the provisions of Chapter 1299 of the Statutes of 1976.”

**Required by Law Use or Disclosure (45 C.F.R. §§ 164.501 and 512(a)(1))?**

No.

**Exceptions (45 C.F.R § 160.203(a), (c) or (d))?**

No.

**Contrary to HIPAA (45 C.F.R § 160.202)?**

No. Chapter 1299 of the Statutes of 1976, originally enacted as Education Code section 24317 and now Education Code section 89546, relates to access to personal records by state university employees. (Ed. Code § 89546.) Civil Code section 1798.78 merely provides that the Information Practices Act supercedes the noted Education Code section and does not affect or involve HIPAA directly. “Where State law exists and no analogous federal requirement exists, the state requirement would not be ‘contrary to’ the federal requirement and would therefore not trigger preemption.” (HIPAA Privacy Rule, Section-by-section Discussion of Comments, 65 F.R. 82581.) Accordingly, there is no further HIPAA preemption analysis required.

**Exception (45 C.F.R. § 160.203(b))? (1<sup>st</sup> Test: Relates to the Privacy of Individually Identifiable Health Information (45 C.F.R. § 160.202)?)**

Inapplicable.

**Exception (45 C.F.R. § 160.203(b))? (2<sup>nd</sup> Test: More Stringent Than HIPAA (45 C.F.R. § 160.202)?)**

Inapplicable.

**Controlling Law(s):**

NO PREEMPTION. Civil Code section 1798.78, only. No related or analogous HIPAA provisions.